

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Commission,) Application No. NG-0035/
on its own motion, seeking to) PI-115
investigate the interactions)
among aggregators, suppliers and) ORDER CLOSING DOCKET
jurisdictional utilities)
operating a customer choice) August 22, 2006
program.)

BY THE COMMISSION:

O P I N I O N A N D F I N D I N G S

On May 2, 2006, the Nebraska Public Service Commission (Commission) opened an investigation into the aggregator, supplier, and jurisdictional utility relationships in a consumer choice program. The Commission issued an order granting a certificate of authority to RnD Energy, LLC (RnD) to operate as a natural gas aggregator in Nebraska on February 28, 2006.¹ RnD intended to create an aggregation pool in the Kinder Morgan Choice Program during the most recent selection period, which concluded May 1, 2006.

The Commission became aware that efforts by RnD to create a pool of clients and negotiate a price for their clients with suppliers in the Kinder Morgan system were unsuccessful. According to consumer complaints received by Commissioners and staff, the pool of customers was disbanded due to issues related to negotiations. The Commission voiced concern over the apparent inability of the suppliers and RnD to reach agreement and accommodate the consumers that opted to utilize the services of an aggregator.

In the above-captioned docket, the Commission requested all interested parties to offer comments on specific areas dealing with the aggregator, supplier, and jurisdictional utility relationship and interaction. OneOK Energy Marketing (OneOK), Kinder Morgan Retail Energy Services (KMRES), Kinder Morgan, Inc. (KM), Cornerstone Energy, The Public Alliance for Community Energy (ACE), Midwest United Energy, LLC (MUE), and RnD submitted comments on the issues raised by the Commission.

The State Natural Gas Regulation Act (Act)² enacted by the Nebraska Legislature in 2003 recognized natural gas

¹ *In the Matter of RnD Energy, LLC, Boulder, Colorado seeking authority as a Competitive Natural Gas Provider in Nebraska*, Application No. NG-0033, (February 28, 2006).

² See Neb. Rev. Stat. § 66-1801 et seq.

aggregators and specifically granted authority to the Commission to certificate aggregators to conduct business in the State of Nebraska if the eligibility criteria established by the Commission were satisfied.³

The pertinent statute states in part, "The commission shall certify all competitive natural gas providers and aggregators providing natural gas services. The commission shall adopt and promulgate rules and regulations to establish specific criteria for certification."⁴ The Commission promulgated rules and regulations that specify the requirements for an applicant to receive authority as an aggregator in Nebraska.⁵

Sections 66-1848 and 66-1849 address certification of competitive natural gas providers and aggregators, but do not specify how either will interact with a jurisdictional utility or one another.⁶ Very little detail is included in the statute on how an aggregator should function within the regulated gas industry.

RnD is the first natural gas aggregator to apply for and receive certification from the Commission to operate as an aggregator in the state of Nebraska. The Act lacks specificity concerning the interactions of entities involved in a consumer choice gas program and expressly gives the Commission the authority to regulate aggregators and suppliers. It is the Commission's intent that aggregators and suppliers work together in good faith within a consumer choice program offered by a jurisdictional utility. In furtherance of that goal, the Commission proposes the following principles concerning the interactions and relationships between suppliers, aggregators, and jurisdictional utilities.

The relationship between a supplier, which is a competitive natural gas provider (CNGP), and the jurisdictional utility is governed by the utility's tariff. Kinder Morgan's tariff includes a Supplier Code of Conduct set forth in Section 38.2 of the Kinder Morgan's General Terms and Conditions of Tariff.⁷ However, Kinder Morgan's tariff is silent on aggregators.

³ Neb. Rev. Stat. § 66-1849.

⁴ See Neb. Rev. Stat. § 66-1849.

⁵ See 291 Neb. Admin. Code, Ch. 9, Rule 009.

⁶ See Neb. Rev. Stat. §§ 66-1848 to 66-1849 (2003 Supp.).

⁷ Kinder Morgan, Inc., General Terms and Conditions of Tariff, Nebraska Gas Tariff No. 1, Section 38.2

The Commission finds that any jurisdictional utility offering a consumer choice program should include in its tariff an Aggregator Code of Conduct. The provisions of such tariff envisioned by the Commission would include, but not be limited to:

- A. A prohibition against misrepresenting through word or action the quality or reliability of other gas suppliers and aggregators.
- B. A prohibition against misquoting or misrepresenting the prices of other suppliers and aggregators.
- C. A prohibition against aggregators and suppliers marketing or advertising in misleading or deceptive ways.
- D. A prohibition against any aggregator or supplier unduly discriminating against similarly situated customers.

The Commission further finds concerning part D above, that consumer choice program customers who choose to use the services of an aggregator should be treated no differently than those making a choice personally. A consumer choice program, as the name implies, is designed to provide options for customers. Since aggregators are specifically recognized under the Act, one such choice should be the ability to employ the services of an aggregator. The decision of a customer to use an aggregator should be honored as a valid choice and dealt with in good faith by other entities in a choice program, including suppliers, other aggregators and jurisdictional utilities.

The Commission acknowledges that suppliers have a vested interest in protecting themselves from liability or unnecessary expense in a business relationship, including a relationship with an aggregator. However, any restrictions imposed by a supplier on an aggregator should reach no further than the harm the supplier is attempting to prevent.

Additionally, the Commission finds that the Act is clear on its face that any person performing aggregation services must be certificated by the Commission. The Act clearly defines aggregator as, "a person who combines retail end users into a group and arranges for the acquisition of competitive natural gas services without taking title to those services."⁸ The Act makes no distinction between

⁸ Neb. Rev. Stat. § 66-1848(1).

aggregators that are compensated for their services and those that provide service free of charge. Therefore, we find that all persons desiring to perform the service of an aggregator in Nebraska must be duly certificated by the Commission.

The Commission expects that the policies and procedures concerning aggregators, suppliers, and jurisdictional utilities will continue to develop and expand as more experience is gained with regulating a consumer choice program. The Commission suggests that aggregators and suppliers work together to determine the terms and conditions of their relationship well in advance of the consumer choice program selection period. In the event of a disagreement, sufficient advance planning may leave enough time for an aggrieved party to bring a complaint at the Commission if necessary.

Finally, the Commission finds that this docket should be closed and that a Rule and Regulation docket be opened to include rules addressing aggregator and supplier relationships. Until rules are adopted, the principles discussed above provide guidance for the relationships among aggregators, suppliers, and jurisdictional utilities.

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that the above-captioned docket be, and it is hereby, closed.

MADE AND ENTERED at Lincoln, Nebraska, this 22nd day of August, 2006.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Chairman

ATTEST:

Executive Director